

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

LISA FORSELL PERRY and
GEORGE WELCH PERRY,

Plaintiffs,

v.

KELLY HERD, individually, and
KELLY HERD d/b/a GOLD CREATIONS,
and KELLY HERD, LLC, a Tennessee
Limited Liability Company

Defendants.

No. 1:04-CV-195

Judge Curtis L. Collier

ORDER

In accordance with the accompanying memorandum, Defendants' motion for summary judgment (Court File No. 28) is hereby **GRANTED IN PART** and **DENIED IN PART** and Plaintiffs' motion for partial summary judgment (Court File No. 41) is **GRANTED IN PART** and **DENIED IN PART** as follows:

(1) Defendants' motion for summary judgment is **GRANTED** on statute of limitations grounds as to the following works: (1) Original Reiner Pendant (VA 583-009); (4) Plain Jumper (VA 583-009); (5) Plain Jumper Earrings (VA 583-009); (6) Cindy Mare (VA 583-009); (7) Racehorse Earrings (VA 581-177); (9) Western Pleasure Pendant (Loop) (VA 581-177); (10) Reiner Earrings (Half Loop) (VA 581-177); (14) Large Halter Pendant (VA 1-162-559); and (17) Paso Fino Pendant (VA 564-818). Plaintiffs claims related to those works are **DISMISSED**.

(2) Defendants' motion for summary judgment is **DENIED** on statute of limitations grounds

as to the following works: (2) Amy's Jumper (VA 583-009); (3) Western Pleasure Horse Pendant and Earrings (VA 581-177); (8) Western Pleasure Earrings (Half Loop) (VA 581-177); (11) Cutter Horse Pin (VA 567-244); (12) Cutter Horse Pendant (VA 1-162-559); (13) Hunt Seat Pendant (VA 1-162-559); (15) Large Reiner (VA 564-818); (16) Large Western Pleasure Horse (VA 564-818); (18) Large Riderless Western Pleasure Pendant (VA 1-110-802); (19) Riderless Huntseat Pendant (VA 1-094-239); (20) Riderless Reiner (VA 1-094-239); (21) Cutting Horse Pin (VA 1-110-802); (22) Medium Reining Pendant (VA 1-096-758); (23) Large Halter Horse Pendant (VA 1-099-105); and (24) Halter Pendant (VA 873-384);

(3) Defendants' motion for summary judgment is **DENIED** on the basis of laches, lack of access to Plaintiffs' works, and the first sale doctrine;

(4) Plaintiffs' motion for summary judgment is **GRANTED** as to Defendants' counterclaim based on its ownership of certain copyrights as works for hire and all claims based on such ownership are **DISMISSED**;

(5) Plaintiffs' motion for summary judgment is **GRANTED** as to Defendants' counterclaim of infringement of Defendants' works with copyright registration numbers VA 731-072, VA 731-096, and VA 731-084 being infringed by Plaintiffs' work with copyright registration number VA 583-009. Defendants' claims related to these works are **DISMISSED**;

(6) Plaintiffs' motion for summary judgment on Defendants' work for hire defense is **GRANTED** and that defense is **STRICKEN** from Defendants' answer;

(7) Plaintiffs' motion for summary judgment on Defendants' joint authorship defense is **DENIED**; and

(8) Plaintiffs' motion for summary judgment on Defendants' fair use defense is **GRANTED**

and that defense is **STRICKEN** from Defendants' answer.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE